IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Bail Appl..No. 6114 of 2007()

CRIME NO. 508/2007 OF CHATHANOOR POLICE STATION

PETITIONER

MANURAJAN, AGED 22 YEARS, S/O.DEVARAJAN, MAYAMANDIRAM, MEENADU VILLAGE, KARAMKODU CHERI, KOLLAM DISTRICT.

BY ADV. SRI.C.K.PRASAD
SRI.ABHILASH S.FRANCIS

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE SI OF POLICE, CHATHANOOR, THOURGH THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 6114 of 2007

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Dated this the 17th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. Altogether there are three accused persons. They face allegations for offences punishable, inter alia, under Section 308 read with 34 IPC.

2. The prosecution alleges that three persons came to the scene of the crime in an auto rickshaw. They mounted an attack on the victim/ de facto complainant, who was standing in front of a textile shop. The de facto complainant knew the petitioner herein, but he did not know the other two accused. There was some earlier incident between the petitioner and the de facto complainant . The assailants had come with a dangerous weapon- sword. The weapon was used in the attack. That weapon was wielded not by the petitioner but by the 2nd accused. Cut injury on the neck is the injury inflicted. The allegations are raised, inter alia, under Section 308 IPC.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He had not shared the common intention and the overt acts along with 2nd accused, who is alleged to have inflicted the injury. At any rate, the allegations under Section 308 IPC is not justified at all.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that all available indications clearly suggest that the assailants who came to the scene of the crime in search of the petitioner armed with dangerous weapons did share the common intention to attack the de facto complainant. So far as the petitioner is concerned, it is evident further that only he had motive against the de facto complainant. It is idle to accept the submission of the learned counsel for the petitioner that the petitioner did not share the common intention of the assailant who indulged in the overt acts.

5. Earlier when the 3rd accused had come to this Court seeking anticipatory bail, I had adverted the facts in detail in the order dated 9.10.07 in B.A.No. 6076/2007. At this early stage of investigation, I shall not embark on any detailed discussion on the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am satisfied that the petitioner is also not entitled for anticipatory bail. Hair splitting analysis of the overt acts committed by the accused persons need not be resorted to at this stage when it is evident that all the accused persons shared the common intention of attacking the de facto complainant. It is the petitioner who alone has motive

against the de facto complainant. It is further shown that the three persons came altogether - evidently in search of the de facto complainant at the scene of occurrence.

6. I find merit in the opposition by the learned Public Prosecutor. There are no features suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course.

7. In the result, this petition is dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail,after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE